

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-MA-023
)	
Air Paging Inc.)	NAL/Acct. No.200332600001
Licensee of Radio Station WPPB501)	
North Miami Beach, Florida)	FRN 0003-7891-04
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 18, 2003

By the Enforcement Bureau, Miami Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Air Paging Inc., licensee of Radio Station WPPB501, apparently liable for a forfeiture in the amount of nine thousand dollars (\$9,000) for willful and repeated violation of Sections 1.903(a), 90.403(f), and 90.425(a) of the Commission's Rules (“Rules”).¹ Specifically, we find Air Paging Inc. apparently liable for failing to operate its Wireless Radio Station in accordance with the rules applicable to that service, continuously radiating an unmodulated carrier, and failing to identify its station by the assigned callsign.

II. BACKGROUND

2. Air Paging Inc. is the licensee of Wireless Radio Station WPPB501. This license authorizes Air Paging Inc.’s operation on the frequency 467.875 MHz, among others, in the Dade County, Florida area. Any station authorized on this frequency is licensed as a mobile station.² However, any units of such a station may provide the operational functions of a base or fixed station on a secondary basis to mobile service operations, provided that the control point and the center of the radiating portion of the antenna of any such units does not exceed 8 meters.³

3. On March 25 and August 5, 2002, the Commission’s Miami Resident Agent Office (“Miami Office”) received complaints of unauthorized operation of station WPPB501, licensed to Air Paging Inc., on the frequency 467.875 MHz.

4. On August 6, 2002, from about 12:30 P.M. to 2:30 P.M., an agent of the Miami Office monitored the frequency 467.875 MHz. The agent observed a radio signal on that frequency transmitting the call sign “KNNF675” in Morse code. The signal transmitted continuously, even when no modulation

¹ 47 C.F.R. §§ 1.903(a), 90.403(f), and 90.425(a).

² See 47 C.F.R. §§ 90.35(b) and 90.35(c)(11).

³ *Id.*

was present. Commission records showed that call sign KNNF675 was licensed to Air Paging Communication Corp. in Pembroke Pines, Florida, and authorized operation on the frequency 929.0875 MHz at several locations in south Florida.

5. On August 8, 2002, from about 12:30 P.M. to 1:00 P.M., and on August 12, 2002, from about 11:13 A.M. to 12:00 P.M., agents of the Miami Office and Tampa Field Office again monitored the frequency 467.875 MHz and again, on both days, observed the radio signal transmitting the call sign “KNNF675.” The station on that frequency transmitted continuously, even when no modulation was present. Using direction finding equipment and techniques, the agents determined the source of the signal to be an antenna mounted on a commercial radio tower at 350 NW 215 Street, Miami, Florida.

6. Still on August 12, 2002, an agent of the Miami Office interviewed Mr. Juan Carlos Median, President of Air Paging Communication Corp. Mr. Medina stated that Air Paging Inc.’s transmitter and antenna for the station operating on 467.875 MHz were installed at the 1000-foot level of the radio tower located at 350 NW 215 Street, Miami, Florida, and that Air Paging Inc.’s office was located at 10757 NW 23 Street, Miami, Florida.

III. DISCUSSION

7. Section 1.903(a) of the Rules requires stations in the Wireless Services be operated in accordance with the rules applicable to their particular service. Section 90.35(b) of the Rules lists the available frequencies in the Industrial/Business Pool which include the frequency 467.875 MHz on which Air Paging Inc. operated. Section 90.35(c)(11) of the Rules specifies limitations on the use of that frequency, *inter alia*, that any unit may provide the operational functions of a base of fixed station on a secondary basis to mobile communications provided that the separation between the control point and the center of the radiating portion of the antenna does not exceed 8 meters (25 feet). Air Paging Inc.’s station operated as a base station at a fixed location at 350 NW 215 Street, Miami, Florida, with its antenna mounted at the 1000-foot level of a communications tower. No control point was located within the required 25 feet of the antenna.

8. Section 90.403(f) of the Rules prohibits the continuous radiation of an unmodulated carrier. On August 6, 8 and 12, 2002, Air Paging Inc.’s radio station at 350 NW 215 Street, Miami, Florida, operating on frequency 467.875 MHz, transmitted an unmodulated carrier for extended periods of time.

9. Section 90.425(a) requires each station or system to identify by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes during periods of continuous operation. On August 6, 8 and 12, 2002, Air Paging Inc.’s radio station at 350 NW 215 Street, Miami, Florida, operating on frequency 467.875 MHz, transmitted the callsign KNNF675, a callsign assigned to a station on a different frequency, and failed to transmit the assigned callsign WPPB501.

10. Based on the evidence before us, we find Air Paging Inc. willfully⁴ and repeatedly⁵ violated

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or

Sections 1.903(a), 90.403(f), and 90.425(a) of the Rules by failing to operate its Wireless Radio Station in accordance with the rules applicable to that service, continuously radiating an unmodulated carrier, and failing to identify its station by the assigned callsign.

11. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount is \$4,000 for operation at an unauthorized location, \$4,000 for unauthorized emissions, and \$1,000 for failure to provide station identification. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$9,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Air Paging Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of nine thousand dollars (\$9,000) for willful and repeated violation of Sections 1.903(a), 90.403(f), and 90.425(a) of the Rules by failing to operate its Wireless Radio Station in accordance with the rules applicable to that service, continuously radiating an unmodulated carrier, and failing to identify its station by the assigned callsign.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Air Paging Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

15. The response, if any, must be mailed to Federal Communications Commission, Office of the

omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Air Paging Inc., 469 NE 167 Street, North Miami Beach, Florida 33162. An additional copy shall be sent by regular mail and Certified Mail Return Receipt Requested to Dave's Communications, Inc. & Gabriel Wireless, LLC, Kenneth E. Hardman, Moir & Hardman, 1015 - 18th Street, NW, Suite 800, Washington, D.C. 20036-5204.

19. IT IS FURTHER ORDERED that the Petition for Imposition of Sanctions filed by Dave's Communications, Inc. on March 12, 2002, IS GRANTED to the extent set forth herein and IS OTHERWISE DENIED, and that proceeding IS HEREBY TERMINATED.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Rodolfo Pomier
Miami Resident Agent Office, Enforcement Bureau

¹¹ For purposes of the forfeiture proceeding initiated by this NAL, Air Paging Inc. shall be the only party to the proceeding.

Attachment